

1 SUPERIOR COURT OF CALIFORNIA
 2 IN AND FOR THE COUNTY OF SACRAMENTO
 3 HON. GAIL D. OHANESIAN, JUDGE, DEPARTMENT NO. 11

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5 SIGARMS INC.,
 6 -vs-
 7 RON JOSEPH, Director, Department of
 8 General Services; DEPARTMENT OF
 9 EQUIPMENT CO.,
 Respondents.

06CS00965

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11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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13 THURSDAY, JULY 13, 2006

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 15 APPEARANCES:

16 For the Petitioner:

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1 THURSDAY, JULY 13, 2006

2 MORNING SESSION

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4 The matter of the SIGARMS INC., Petitioner, versus
5 RON JOSEPH, Director, Department of General Services;
6 DEPARTMENT OF GENERAL SERVICES; ALL STATE POLICE
7 EQUIPMENT, CO., Respondents, 06CS00965, came on
8 regularly before the Honorable GAIL D. OHANESIAN, Judge
9 of the Superior Court of California, in and for the
10 County of Sacramento, sitting in Department Number 11.

11 The Petitioner was represented by
12 RANDALL L. ERICKSON, Attorney at Law.

13 The Respondent, ALL STATE POLICE EQUIPMENT, CO.,
14 was represented by STEPHEN N. ROBERTS, Attorney at Law.

15 The Respondent, DEPARTMENT OF GENERAL SERVICES,
16 was represented by JACK C. WOODSIDE, Attorney at Law.

17 The following proceedings were then had:

18 THE COURT: Come up to the counsel table on
19 Sigarms versus Ron Joseph and others.

20 May I have your appearances, please?

21 MR. ERICKSON: Randall Erickson of Crowell and
22 Moring for Petitioner, Sigarms, your Honor.

23 THE COURT: Good morning.

24 MR. ROBERTS: Good morning, your Honor.

25 Stephen Roberts on behalf of Defendant All State
26 Police Equipment, Inc.

27 MR. WOODSIDE: Morning, your Honor.

28 Jack Woodside on behalf of Defendant, Department

1 of General Services.

2 THE COURT: Good morning.

3 I have reviewed all the papers in this matter. I
4 received papers from all parties.

5 From the Petitioner, the Application and three
6 supplemental declarations, and from the Respondent,
7 Department of General Services, an Opposition, and then
8 from Respondent All State, an opposition, some
9 objections and two -- three additional declarations. I
10 have reviewed those documents.

11 I'll let Sigarms respond to those since they
12 haven't had a chance to do that yet.

13 I could address the objections first, though.

14 There was an objection to the Cohen declaration.

15 Did you want to respond to any of that?

16 MR. WOODSIDE: No, your Honor.

17 THE COURT: I'm inclined --

18 On that objection I'm inclined to sustain the
19 objection as to lines 21 to 32 of the Cohen declaration
20 and overrule the balance of that objection.

21 I'm inclined to sustain the objection, number --

22 The first comment was as to objection number one.

23 The second --

24 There was an objection number two to the Cohen
25 declaration. I'm inclined to sustain that.

26 Did you want to be heard on any of that.

27 Anybody?

28 MR. ERICKSON: Your Honor, just briefly.

1 We understand that the newspaper articles
2 are hearsay. We didn't tender them for any purpose
3 other than to call the Court's attention to some of the
4 background here that might cause the Court to exercise
5 its discretion on this TRO application.

6 Some of the material that's in those articles that
7 can be proven by extraneous, other documents we have in
8 our possession which I'll go through today.

9 THE COURT: All right. Those evidentiary rulings
10 would be confirmed then.

11 Objections one and two to the Lopez declaration,
12 I'm inclined to sustain those.

13 Did you want to be heard on that?

14 MR. ERICKSON: Just the same arguments,
15 your Honor.

16 THE COURT: The same.

17 All right. That will be the ruling on that.

18 There was a request for judicial notice concerning
19 the fact that Sigarms' bid protest was made and then
20 withdrawn.

21 I'm inclined to deny that.

22 Anybody want to be heard on that?

23 MR. ROBERTS: Your Honor, I would --

24 Stephen Roberts on behalf of All State.

25 It's certainly a critical aspect of the exhaustion
26 of administrative remedies argument. I believe there's
27 no contest on the part of Sigarms that they did, in
28 fact, withdraw that.

1 So long as that's a fact that's in the record, I
2 guess I don't care if it comes in by judicial notice or
3 by admission from them.

4 THE COURT: Do you have an objection to the Court
5 taking judicial notice of that?

6 MR. ERICKSON: We do, your Honor.

7 There's nothing in the record documentary to
8 support that. I've contacted Sigarms' general counsel.
9 He denies asserting that.

10 The only record Sigarms withdrawing his Petition
11 here as a self-serving declaration of Mr. Patton which
12 is based on his alleged conversation with the general
13 counsel of Sigarms.

14 THE COURT: Objection --

15 That objection is sustained. Request for judicial
16 notice on that particular fact is denied.

17 Then there was a request for judicial notice of an
18 executive order, D7 -- D-7-99.

19 I'm inclined to grant that.

20 Anybody want to be heard on that?

21 MR. ERICKSON: We have no objection to that,
22 your Honor.

23 THE COURT: That request for judicial notice is
24 granted.

25 I'll hear from Sigarms first. I just would ask
26 you to focus on the TRO aspect, and that in granting
27 TRO on an ex parte basis, the general guidelines for
28 the Court are that it's intended to preserve the status

1 quo and that there must be a showing of greater
2 irreparable injury.

3 MR. ERICKSON: Very well, your Honor.

4 I think the status quo argument is simply this,
5 that there's enough background here to indicate that
6 there are severe, serious questions about the nature
7 and manner in which the procurement was undertaken that
8 justified the TRO now so we can explore in greater
9 detail the background of this protest, this
10 procurement.

11 The second issue is simply this:

12 Sigarms has no adequate remedy at law in this. If
13 they don't get the job, then they lose the profit.
14 They cannot get profit under -- under CAGIMA
15 (phonetic). They're limited to their bid preparation
16 costs.

17 The second issue is simply this:

18 Is you've got a contract of about \$5,000.000.00
19 which Sigarms' bid was 2.2 million dollars less than
20 the one bidder that bid.

21 So there's irreparable harm also to the taxpayers
22 here, your Honor. They're going to pay 2.2 million
23 dollars more for this product than they would otherwise
24 have to but for the nature in which the procurement was
25 taken.

26 So there's two factors, your Honor.

27 THE COURT: So you're here representing the
28 taxpayers?

1 MR. ERICKSON: We would make an oral motion to --
2 to be heard in that fashion as well, your Honor.

3 I know we didn't plead it, but I think it's -- I
4 think it's under -- understood or under -- part of the
5 undercurrent of this whole pleading is for the benefit
6 of the taxpayers, as well.

7 So make a speaking motion to be heard on that in
8 that respect as well, your Honor,

9 THE COURT: All right. Anything else?

10 MR. ERICKSON: I'd like --

11 May I go through some of the details, your Honor?

12 Is that possible at this juncture?

13 THE COURT: Sure. Briefly, but yes.

14 Keep in mind that I have read the pleadings, and I
15 believe I understand the basic details, but if you want
16 to go over something, that would be fine.

17 MR. ERICKSON: We know that the State Admin Code
18 3555 requires that the sole source brand justification
19 should at least state whether the products have been
20 examined and rejected and why.

21 Now, the State's brief on page five says exclusion
22 of one of them does not necessarily render it fatal,
23 which is sort of damnation by feign praise, because the
24 statute itself says at least. It does not say could
25 be. At least one of these three things has to be
26 there, and it's not.

27 Now, we also know there's only one bid on this
28 project. Only one bid. Therefore, there was no

1 competitive bidding whatsoever on the part of any
2 Smith & Wesson distributor other than the one --
3 All State.

4 We know the State has conceded in its pleading
5 that they did not undertake -- determine if the -- if
6 the Smith & Wesson distributors whose names they had
7 were authorized by Smith & Wesson. And we know that we
8 have this declaration from
9 Mr. Hindle in which he says there were two other
10 distributors that were authorized at the time of the
11 bid solicitation.

12 Now, I looked --

13 I got this last night and I looked at it this
14 morning. Mr. Hindle's declaration on page three, line
15 25 says that -- actually 22 through 26 -- said that
16 these two distributors were factory authorized at the
17 time of the solicitation. We know the solicitation was
18 dated March 31st.

19 If you look at Exhibit A, which is the contract
20 that Smith & Wesson has with Adamson, I believe
21 Adamson, it's dated March 31st which is after the
22 solicitation.

23 So obviously they were not authorized until after
24 the solicitation, so Mr. Hindle's declaration is
25 incorrect in that respect.

26 Secondly, Mr. Hindle suggests in his declaration
27 that the second bidder on this job, which is
28 American Shooter Supply, could have bid in California,

1 but if you look at the contract, Exhibit A to that
2 contract limits American Shooters to the territory, and
3 the territory is described in the attachment to that
4 contract, Exhibit A, Nevada.

5 And in the contract itself, it prohibits the --
6 All State from making a bid of any products to any --
7 any entity which is federal excise tax exempt
8 customers outside the territory which would be the
9 California Highway Patrol.

10 They're federal excise tax exempt; therefore,
11 All State could not have bid on this job, either.

12 So, the simple fact is the declaration of
13 Mr. Hindle if anything validates what was said in the
14 newspaper articles that we had in front of us.

15 THE COURT: Wait a minute.

16 All State is the one that did bid.

17 MR. ERICKSON: I'm sorry. I misspoke, your Honor.
18 American Shooters is the one he referred to.

19 The second --

20 The second exhibit in Mr. Hindle's declaration,
21 Exhibit B, is a contract with American Shooters and
22 Smith & Wesson, and in it, the first paragraph says
23 that they -- their -- their work is confined to the
24 geographic area known as the territory.

25 If you look at attachment A to that contract, it
26 says the territory is Nevada.

27 And in the contract itself under paragraph N, it
28 says the distributor shall not bid for the sale of any

1 products for any federal excise exempt customers
2 outside the territory, which means that Mr. Hindle is
3 incorrect when he asserts that they could have bid on
4 this job.

5 So, the simple fact is, your Honor, that no one
6 has refuted the claim was made in the Sacramento Bee
7 articles that there was no qualified bidder other than
8 the one that bid, and if anything, Mr. Hindle's
9 declaration, which is evidence, which is evidence,
10 your Honor, he submitted it, verifies that at least
11 that's true as to those two distributors.

12 Consequently, what you had here is a -- not only a
13 sole brand procurement, which was not properly
14 validated by 3555, but you have a sole source because
15 it was only one bidder.

16 Now, I don't know if you want me to address this
17 executive order issue, your Honor, but I'm happy to do
18 so.

19 The issue in the executive order --

20 THE COURT: Go ahead briefly.

21 MR. ERICKSON: Well, there are at least four
22 different issues here, your Honor.

23 First, number one is the CHP could have sought
24 relief from that.

25 Number two. If you look at the pleadings, the --
26 All State suggests that the way this executive order
27 reads is that the weapons must be returned to the
28 original manufacturer.

1 That's not what the executive order says. It says
2 return to the manufacturer.

3 So ergo, that document is susceptible of being
4 read that it could be returned to any manufacturer
5 including Sigarms which would mean that it could
6 qualify to give the credit for the return of the
7 weapons.

8 I also tell you we've got two letters from both
9 the CHP and the DGS which are in our papers when they
10 explained to Sigarms why they are rejecting their
11 protest.

12 They never mentioned this executive order.
13 This executive order never appears anywhere until
14 this dispute arose and then out of the woodwork it
15 comes.

16 The other thing is this, your Honor:

17 This party that's bid on this job and is allegedly
18 going to get the credit is not a manufacturer. It's a
19 distributor.

20 So how can the distributor give the credit for
21 return to the manufacturer when it's not a
22 manufacturer?

23 So this whole issue about the executive order
24 is -- is very, very ambiguous and I think it's --
25 it's an argument that came too late in the game and I
26 don't think it's supported by any real facts.

27 Because if you took this to the element of
28 extreme, no one could ever -- if you accepted the

1 position of All State, no vendor of a weapon could ever
2 bid on a job for the CHP unless it was Smith & Wesson
3 because they were the original manufacturer back in
4 1990.

5 But as I say, the executive order does not say
6 original, and that's what's asserted in the pleadings
7 here. But it does not say that. It says manufacturer,
8 your Honor.

9 So there's two issues at the very least.

10 This is a distributor that's bid this job, not a
11 manufacturer. And number two, it doesn't say original
12 manufacturer. Ergo, I believe Sigarms could properly
13 give the credit.

14 The other issue is they talk about the warranty.
15 It's a lot of semantic nonsense, your Honor. That
16 issue wasn't raised in the responses we got in April.
17 They didn't talk about the warranty. They just said
18 Sigarms is not Smith & Wesson you don't qualify.

19 So we know that these are issues that are very,
20 very remote, if not conjured up after the fact.

21 The simple fact is they didn't comply with 3555,
22 they did not tell what other weapons have been examined
23 and rejected and why, and we know that they only got
24 one bid.

25 There's one other thing that I would like to
26 address, your Honor, which I think is a salient issue
27 on the emergency issue.

28 In our filings here, our many filings, we

1 submitted in Miss Lopez' second supplemental
2 declaration a copy of a memorandum which was ostensibly
3 issued back in January in which the author discusses
4 the status of the weapons in the CHP possession and why
5 they want to do what they want to do.

6 And if you look at page four of that memo, number
7 one in the second paragraph, the memo concedes that the
8 TSW would require a new holster.

9 Recall one of the Sacramento Bee articles talked
10 about the three hundred and eighty-thousand dollars for
11 the new holster.

12 Well, the Bee article is correct because the CHP's
13 own memo says they're going to have to get a new
14 holster.

15 This is all on page four of this memo,
16 your Honor.

17 The other thing that's interesting. If you go
18 down one, two, three pages -- three paragraphs, it says
19 the WTU -- that's the Weapons Training Unit --
20 presently has 275 Smith & Wesson's 4600 TSW pistols in
21 stock.

22 Now, none of that is set forth anywhere here, but
23 the simple fact is they had those weapons available to
24 them.

25 So the fact that -- the argument that they have a
26 shortfall is not well-taken given the fact they have
27 that in stock by their own memo.

28 The second thing is under the Public Contract

1 Code, as long as they went under \$25,000.00, they could
2 go out and procure 40 or so weapons without competitive
3 bidding. If they really had a real urgency, they could
4 undertake that effort, too.

5 And finally, if they were really short, they
6 could go back and re-claim the weapons they sold to
7 the retirees during the fact that they were --
8 during the period of time they were depleting their
9 stores.

10 In fact, if you look at the history of this
11 whole procurement, which is set forth in Exhibit J
12 to our application, the CHP has its own website in
13 which it lays out the chrono of this procurement.

14 And on March 14th of 2006, the DGS denied and
15 removed the option for the buy-back program based
16 on Public Contract Code 10334, which is the buy-back
17 to retirees, your Honor. They took that out of
18 this procurement to protect -- to guard against the
19 same thing happening hence forward; that is, depletion
20 of the inventory by retirees procuring their own
21 weapon.

22 So there are at least four different sources that
23 they could go to to get weapons to tie them over during
24 this so-called emergency period, and they failed to
25 consider any of them.

26 Plus, by their own writings they knew they
27 had this problem back in 2005, but they didn't do
28 anything to act on it. They just went ahead and

1 assumed they were going to take Smith & Wesson as the
2 bidder.

3 If you go back into this memo that I referred
4 to earlier, the -- it's clear that they were discussing
5 with Smith & Wesson the amount of the credit they were
6 going to get before the bid was ever put out for
7 solicitation.

8 It's a clear violation of the Public Contract
9 Code.

10 They had separate negotiations with Smith & Wesson
11 about this procurement and about the credit they would
12 obtain before they even published it.

13 Now, to me, your Honor, that's -- that's a very,
14 very checkered history on a procurement of this
15 magnitude.

16 I also noted that the -- the memorandum that was
17 put out in January suggested that they buy these
18 weapons over the course of three years in increments of
19 3,000.

20 Instead of doing that, they stopped at the
21 9,700 in one lump. I have no idea why that happened
22 because we have not had -- yet got responses to our
23 public records request, but I'm certain that there
24 will be some information in there as well, your Honor,
25 which is why I think the TRO is at issue now so
26 that we can explore this in greater detail hence
27 forward.

28 I think that we can validate most everything

1 that's been set forth in the Bee articles. We already
2 have elevated some of 'em as I've already said, as I
3 pointed out to the Court here.

4 This is a --

5 This is a procurement that denied Sigarms, denied
6 Glock, denied anybody an opportunity to bid this job
7 and arguably cost the taxpayers another 2.2 million
8 dollars.

9 Now, that may not seem like a lot of money in
10 this day and age, but you remember Everett Berkson
11 (phonetic) always said that a million here and a
12 million there, and pretty soon you're talking about
13 real money.

14 So, I'd be happy to address any of the other
15 points that were raised in the opposition here, but I
16 think those are the most significant ones.

17 Simply stated is that if anything, the documents
18 that have been submitted such as the Hindle declaration
19 merely verify what we said.

20 There was only one bidder that was ever going to
21 qualify to make this job. There was no competition on
22 it whatsoever and it was probably no intention of
23 having any competition on it, because as I say, they
24 were negotiating this deal in January before the bid
25 was even set up.

26 If you have any questions, your Honor, I'll be
27 happy to address them.

28 THE COURT: I don't.

1 Who wants to be heard first for the other side?

2 MR. ROBERTS: May I, your Honor, with Counsel's
3 permission.

4 The --

5 Let me address the issues of irreparable injury
6 which I think your Honor wanted to hear about. I think
7 I have three brief points.

8 First, with respect to preserving the status
9 quo. We kind of came close to trying -- to argue
10 to your Honor that in essence what they're asking for
11 is a mandatory injunction instead of just a prohibitory
12 one.

13 Simply because the nature of the harm that
14 is occurring to my client and in part to the State
15 is that there has been this huge, ongoing process
16 started in which my client's manufacturer has already
17 invested millions, and the State is expecting delivery
18 by?

19 July 28th because of some immediate needs.

20 Counsel said well, they can go out and do a
21 twenty-five-thousand-dollar procurement which I
22 think basically admits that there's no harm to the --
23 to the State. There's no need for a TRO if, in fact,
24 they could go out and do an immediate procurement for
25 the amount of weapons which would be delivered
26 immediately.

27 So there is a huge amount of damage that
28 will occur to my client because -- and its

1 manufacturer because of the huge amount already
2 invested in the ongoing preparation of meeting this
3 contract.

4 Second. The relevance of Governor Davis'
5 order has nothing to do with the reason the State
6 rejected. They rejected Sigarms' bid as being
7 non-responsive, and I don't even think counsel would
8 agree or would argue that it was responsive since it
9 required identifying the specific weapon which they
10 could not supply.

11 The importance of the executive order goes to the
12 irreparable harm issue which is pertinent to the TRO.

13 They are arguing that the irreparable harm to the
14 State is that the State is paying more for weapons it
15 is purchasing than it would have had they bought his
16 client's product.

17 The order makes clear that it would be
18 forbidden for California Highway Patrol, were it to
19 follow the law, to sell these arms by via credit to
20 Sigarms.

21 The attempt at parsing that counsel makes of
22 the executive order just doesn't work. It makes it
23 clear. Return to the manufacturer. I mean, it's --
24 it's pretty clear language. You can't return it to
25 someone else who is never in the supply chain in the
26 first place. When it says the manufacturer, it's clear
27 that it's referring to the manufacturer of those
28 weapons.

1 So, the issue is harm, and when you subtract
2 that credit, it is quite clear that the weapons
3 that the State is actually purchasing are less
4 expensive than what Sigarms said it could offer,
5 let alone not even getting into the issues of
6 re-training and the long-term warranty and everything
7 else.

8 All those issues go to irreparable harm, not to
9 the issue of whether or not the State properly rejected
10 Sigarms' bid as non-responsive.

11 Third. There were some comments about the
12 merits of the underlying action. I don't want to
13 dwell on those, except may I respond just to one
14 point.

15 And that is that Counsel argued that looking at
16 the March 31st date of the one contract shows that
17 since that was after the time the original solicit and
18 the invitation to bid went out, that it was not
19 current.

20 Well, in fact if you read their documents, their
21 bid went in April 18 I believe it was of the year.

22 In our, you know, 18-hour scramble to get papers
23 ready for this hearing, I suppose we could have
24 submitted the prior years' contract as well, but the
25 one going into effect March 31st was the one relevant
26 to the end of the bid period.

27 And you do have admissible evidence from my
28 client. I guess the declaration was attacked as

1 self-serving. Well, most declarations are... But
2 they're telling your Honor the facts which that
3 there were distributors out there that could have
4 bid.

5 And the issue is not ultimately who did bid,
6 but the issue is whether the Department of
7 General Services acted properly in making a
8 determination that there were a number of competitors,
9 and therefore proceeding -- they did procedure
10 lawfully.

11 Thank you, your Honor.

12 THE COURT: Thank you.

13 Mr. Woodside, do you have anything you want to
14 add?

15 MR. WOODSIDE: Just briefly, your Honor.

16 Thank you.

17 I don't want to repeat arguments, but I think
18 it is telling as far as the irreparable injury
19 portion of this that there are really two brief
20 references to it in a 12-page application, and it's a
21 very important element, and now he's attempting to say
22 that there's irreparable harm possibly to the State of
23 California.

24 And there's just no showing of harm to his client
25 if this TRO is not issued, and the reason is because
26 they at best only ever had an opportunity to possibly
27 get a contract. That's the harm.

28 Whereas, if you -- if you look at the harm to

1 Respondents, it's -- it weighs heavily in favor of
2 denying the TRO.

3 Two months ago the contract was awarded. In
4 reliance on that contract, Smith & Wesson, All State
5 had geared up, started manufacturing these guns,
6 have spent enormous amounts of time, energy and to
7 make sure these shipments arrived at the CHP, and
8 the CHP needs these pistols. They have a low
9 inventory. They're going to use these pistols to give
10 to the Academy graduates, as well as to give to new
11 officers because they have old pistols out on the
12 street.

13 So there really is no question. The balance of
14 harms weighs in favor of denying the TRO.

15 I would like to address the point that Petitioner
16 made about Adamson not being able to present a
17 bid because the agreement says it was entered into
18 on March 31st, and the invitation for bid was
19 dated March 30th, 2006. There's a one-day difference
20 there.

21 That didn't preclude Adamson from submitting a
22 bid.

23 The invitation for bid was due on April 18th.
24 There's plenty of time there.

25 So I don't think that argument works.

26 Their whole argument revolves around the fact that
27 there was one capable bidder. The evidence before the
28 Court shows that that's just not true.

1 There were other eligible bidders out there. It
2 just so happens one submitted a bid.

3 But the fact that there is no irreparable harm
4 and the fact that evidence shows that -- that there
5 was more than one eligible bidder weighs heavily
6 in favor of denying this TRO, and it will keep the
7 status quo that's in place right now which is very
8 important.

9 Unless you have any other questions, I'll submit
10 it on that.

11 THE COURT: Thank you.

12 Did you want to reply to anything?

13 MR. ERICKSON: Just briefly, your Honor, if I may.

14 The irreparable harm argument is simply not valid
15 here. This is not a unique weapon that's being
16 manufactured or produced here. It's a standard
17 Smith & Wesson 4600 TSW.

18 If they don't sell it here, ostensibly they could
19 sell it somewhere else.

20 We're quite certain that they could cut a deal
21 with All State to relieve them of any financial burden
22 associated with this.

23 So the fact that they may have geared up does not
24 obviate the fact that they have other sources of
25 disposing of these weapons.

26 The second is, your Honor, I don't think
27 that it necessarily follows that procurement was
28 invalidated, was not procured properly, that

1 necessarily that the vendor -- the vendor's damages are
2 relevant.

3 It's the issue is was the procurement valid.

4 So you have two issues.

5 One is was the procurement valid, and the
6 answer is no, and number two is this vendor has not
7 produced anything unique here. They could sell it
8 elsewhere.

9 Now, the other thing is we say as to the State,
10 we've seen in their own memo that they have 275 weapons
11 in their inventory. They Could procure another 40
12 under \$25,000.00.

13 So they have enough to relieve their short-term
14 pressure if they wanted to.

15 They simply do not want to explore any other
16 options here other than Smith & Wesson. It's clear
17 from the very beginning that's the only option they
18 wanted to explore.

19 They were --

20 They were negotiating with Smith & Wesson for the
21 credit in March -- beg your pardon -- in January before
22 the bid was ever issued.

23 Now, counsel makes the point that Sigarms
24 could not provide the specified weapon, and that's
25 true because the specified weapon was a Smith & Wesson.

26 You could never --

27 Glock could not provide a Smith & Wesson.

28 Remington could not provide a Smith & Wesson. No one

1 could.

2 And as I say, even Adamson's contract, okay, was
3 entered into on the 31st. Procurement is on the 30th.
4 But Adamson did not have that contract at the time the
5 CHP went out or the DGS went out to determine who was
6 the valid bidder.

7 DGS by its own pleadings has conceded they did not
8 determine whether or not any of the named distributors
9 were factory authorized; yet, this procurement
10 specifically said that the bidder must be factory
11 authorized.

12 So they went out and found out -- and you can look
13 at their own pleadings. They said they went out and
14 talked to these people.

15 Did they have this 4600 TSW?

16 Answer. Yes.

17 Did they ask them are you factory authorized?

18 They did not. They concede that in their
19 pleadings. They did not make that inquiry; yet, their
20 bid, solicitation clearly says you must be factory
21 authorized.

22 It seems to me that the burden is on DGS to show
23 that it made the inquiry relevant to this proceeding.
24 They did not make that inquiry; yet, they made that a
25 requirement in the bid solicitation. Must be factory
26 authorized.

27 Their own pleadings concedes they did not do that.
28 That's a fact in this case, your Honor.

1 And the burden is upon the DGS to show that
2 they adequately explored the viability of other
3 bidders on this job. Their own pleading shows they did
4 not. They did not ask anyone if they are factory
5 authorized.

6 Consequently, they got one bid, one and only one
7 bidder. That's what happened.

8 They didn't do the 3555 properly. They didn't
9 explore the bidders properly. That's why we ended up
10 with only one bidder on this job.

11 Thank you, your Honor.

12 THE COURT: Is the matter submitted?

13 MR. ROBERTS: Yes, your Honor.

14 Thank you.

15 MR. WOODSIDE: Yes, your Honor.

16 THE COURT: All right. A number of arguments have
17 been raised. A number of interesting arguments have
18 been raised on the merits of this case.

19 I need to stress that today is not the day to
20 address the merits of the case.

21 The Petitioner, Sigarms is here seeking immediate
22 and interim relief, particularly issuance of a TRO on
23 an ex parte basis.

24 And as I indicated, a TRO on an ex parte basis is
25 intended to preserve the status quo pending a properly
26 noticed motion for preliminary injunction.

27 Under CCP Section 527, sub (c), the Court is
28 precluded from granting a TRO on an ex parte basis

1 absent a showing that greater irreparable injury will
2 result to the applicant before the matter can be heard
3 on notice.

4 I find that the Petitioner, Sigarms has not shown
5 that it will be irreparably injured if this TRO was not
6 immediately granted.

7 This contract has already been awarded to
8 All State. Sigarms will have no opportunity to
9 even attempt to submit a successful bid unless and
10 until the Court determines that the current contract is
11 void.

12 Even if the Court were to so find, even if the
13 Court ultimately finds this contract is void, DGS,
14 General Services would then have various courses of
15 action available to it for determining how they wish to
16 proceed after that.

17 So, it's speculative at best as to whether
18 there would ever be any economic benefit ultimately
19 available to Sigarms for supplying pistols for use
20 by the CHP, and for those reasons, the TRO will be
21 denied.

22 The ultimate issue here is whether or not the
23 Court will ultimately determine that this contract
24 is void, and that will be set for hearing on another
25 day.

26 Also, as to whether or not -- whether and how
27 to proceed on a hearing on a preliminary injunction if
28 Sigarms wants to pursue that, I would give --

1 I think the best way to approach that. If Sigarms
2 does want to pursue a preliminary injunction, these
3 arguments that have been raised to the merits I
4 think need further briefing particularly from Sigarms,
5 since they -- they did orally respond just now today,
6 but have not had an opportunity to present written
7 arguments.

8 Do you wish to pursue that avenue or do you
9 want to have the matter just set for a hearing
10 on the merits as to whether the contract should be
11 voided?

12 MR. ERICKSON: If I may, your Honor.

13 I'd like to confer with my client on this. I have
14 to call them in Connecticut.

15 If I could advise the Court with what we wish to
16 do at this juncture within a day.

17 Would that be satisfactory?

18 THE COURT: Perhaps we could just set the two
19 hearings then, and --

20 MR. ERICKSON: Very well.

21 THE COURT: -- and if you want to drop the
22 preliminary hearing matter, you can do that.

23 MR. ERICKSON: Fine, your Honor.

24 THE COURT: Do you want to do it that way?

25 MR. ERICKSON: That's fine, your Honor.

26 THE COURT: For a hearing on the merits, I would
27 set that about 60 days out.

28 And I want to emphasize here I am not ruling on

1 the merits. As -- as indicated, there's been a number
2 of arguments raised, and I'm not ruling on the merits
3 of any of those.

4 It's possible the Court could ultimately
5 determine this contract is void, and so, the
6 parties would be proceeding at their own risk in that
7 regard.

8 Also, one other thing I wanted to say on -- to
9 Petitioner is in the future, it would be very helpful
10 if you could tab your briefs. I did go through
11 everything that you submitted, but it's a struggle when
12 they're not tabbed.

13 MR. ERICKSON: I beg your pardon, your Honor. I
14 will attempt to reform my associate on that.

15 THE COURT: Actually what I'm going to do is have
16 you get a date with the clerk about 60 days out for a
17 hearing on the merits.

18 If you want a date in between that for a hearing
19 on a preliminary injunction, you may obtain a date for
20 that, as well, and I would expect that you'll be able
21 to agree to a briefing schedule for the preliminary
22 injunction.

23 In terms of the hearing on the merits, the
24 briefing schedule would be in accordance with our local
25 rules.

26 MR. ROBERTS: Might I ask, your Honor, that there
27 be an order that time to respond to document request
28 and interrogatory be 15 days instead of 35, as long as

1 the requests are served by FAX or e-mail and were to
2 meet the briefing schedule for the preliminary
3 injunction?

4 THE COURT: Is that agreeable?

5 MR. ERICKSON: That's fine with me, your Honor.

6 THE COURT: So ordered.

7 MR. WOODSIDE: That's fine.

8 THE COURT: Mr. Roberts, would you prepare an
9 order for today?

10 MR. ROBERTS: Yes, I will, your Honor.

11 THE COURT: Thank you.

12 MR. WOODSIDE: Thank you, your Honor.

13 MR. ERICKSON: Thank you, your Honor.

14 THE COURT: Thanks.

15 (Proceedings Concluded)

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Court: Superior Court of California,
County of Sacramento.

Judge: HON. GAIL D. OHANESIAN,
Department Number 11.

Case: SIGARMS, Inc., Petitioner,
vs. RON JOSEPH, Director, Department of
General Services; DEPARTMENT OF GENERAL
SERVICES; ALL STATE POLICE EQUIPMENT, CO.,
Respondents.
Case Number 06CS00965.

Date: THURSDAY, JULY 13, 2006.

I further certify that my said shorthand notes have been transcribed into typewriting, and that the foregoing pages 1 to 29, inclusive, constitute an accurate and complete transcript of all of my shorthand writing for the dates and matter specified.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information have been redacted, if applicable.

Dated: July 14, 2006.

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